

Mary Cottrell, Secretary
Department of Telecommunications and Energy
One South Station, 2nd Floor
Boston, MA 02110

September 3, 2004

RE: Fitchburg Gas and Electric Light Company, D.T.E. 04-48

Dear Secretary Cottrell:

On August 30, 2004, Fitchburg Gas and Electric Light Company (“Fitchburg” or “Company”) filed its initial brief asking the Department of Telecommunications and Energy (“Department”) to approve a new reconciling tariff formula to recover costs associated with the Fitchburg’s pension and post-retirement benefits other than pensions (“PBOP”) obligations. The Attorney General submits this letter to the Department as his reply brief.¹

The Department should reject this filing since the Company has not submitted a sufficiently objective tariff formula to qualify for automatic reconciliation. *Consumers Organization For Fair Energy Equity, Inc. v. D.P.U.*, 368 Mass. 599, 601-03, 608 n. 12 (1975) (discussing reconciling fuel charges). The Company has not provided a fixed formula with objective elements, but rather seeks approval of a formula with complicated variables that contain a considerable degree of subjectivity in their calculation.² Exh. FGE-1 at 029-31, 034-36; *see also* Exh. AG-5, pp. 123.14 and 123.17. The proposed tariff addresses pension and PBOP related expenses. It is not the type of actual cost “pass-through” provision operating in terms of a mathematical formula that the Supreme Judicial Court approved. *Consumers Organization For Fair Energy Equity, Inc. v. D.P.U.*, *supra*, 368 Mass. at 602.

In its brief, the Company relies heavily on the Department’s order in the NSTAR pension and PBOP reconciliation case to justify its request. Company Initial Brief (“Co.Br.”), pp. 13-15

¹This reply brief is not intended to respond to every argument made or position taken by the Company. Rather, it is intended to respond only to the extent necessary to assist the Department in its deliberations, *i.e.*, to provide further information, to correct misstatements or misinterpretations, or to provide omitted context. Therefore, silence in regard to any particular argument, assertions of fact, or statement of position in the Company’s initial brief should not be interpreted as agreement.

² Fitchburg’s management decides the amount of pension and PBOB costs; the actuary does not “objectively” determine the costs.

citing *NSTAR*, D.T.E. 03-47-A (2003). Fitchburg claims to have submitted the exact same formula. *Id.* The NSTAR pension formula, however, contained inputs that involve subjective and actuarial judgment. By illustration, rather than limitation, some of these inputs include: 1) the actuarial valuation report used, 2) the selection of the discount rate, 3) the selection of the return on trust fund assets, 4) the selection of a wage base increase factor, 5) the actuarial assumptions included in the underlying actuarial tables, i.e. mortality, disability, etc., used in the related calculations, and 6) the underlying data used to derive the trends in health care, medicare and prescription drug costs. *See* Gotham Affidavit submitted in D.T.E. 03-47-A.³ Some of the inputs also involve calculations, formulas, assumptions, and allocations of the pension and PBOPs costs among the distribution companies and related organizations. *See* Affidavit of Newhard submitted in D.T.E. 03-47-A.⁴ While the Fitchburg formula appears to be fixed, it contains far too many complicated, moving and subjective elements to be considered fixed from one reconciliation filing to the next.

Fitchburg's proposal is different from other reconciliation mechanisms in two other significant ways. Unlike the Cost of Gas Adjustment Clause, the Company can produce no bills or invoices for these costs. Fitchburg has not proposed, moreover, nor is it required, to actually pay out this amount of cash into the respective trust funds. The Company does not even make the payments for pension and PBOP benefits, the trust fund does.

For these reasons, the Department should reject Fitchburg's proposed reconciliation mechanism.

Respectfully submitted,

Alexander J. Cochis
Assistant Attorney General

cc: Service list

³ Pursuant to 220 C.M.R. § 1.10(3), the Attorney General incorporates by reference the December 22, 2003, affidavit of Stacey Gotham submitted in DTE 03-47-A.

⁴ Pursuant to 220 C.M.R. § 1.10(3), the Attorney General incorporates by reference the December 22, 2003, affidavit of Timothy Newhard in DTE 03-47-A.